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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,952

08/28/2006

Serge Creutz

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EXAMINER

GRESO, AARON J

ART UNIT

PAPER NUMBER

4131

NOTIFICATION DATE

DELIVERY MODE

12/08/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents.admin@dowcorning.com

Office Action Summary	Application No. 10/590,952	Applicant(s) CREUTZ ET AL.	
	Examiner AARON GRESO	Art Unit 4131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/28/2006 and 10/26/2007</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1, 4, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by *Young (US 4152272)*.

Young discloses a composition used for fabric treatments (*i.e., of a household or textile care product, col. 1 lines 35-66*) comprising a fragrance (*e.g., perfume-containing particles, col. 2 lines 6-9, or "active component" col. 8 lines 10-11*), a carrier (*col. 2 lines 31-40*); silicone polymers and a quaternary ammonium material (*i.e., a cationic surfactant, col. 7 lines 47-65*). The quaternary ammonium described by *Young* contains one or two alkyl chains, each having 12-30 carbon atoms. See column 7 lines 55-56 and column 5 lines 55-56. The active material (fragrance) is mixed with a silicone to form the oil phase of an oil in water emulsion. See Example 3 column 9.

As to Claim 4, *Young (col. 9 lines 43-61, Example 3, using wax from Example 1 that can be made with microcrystalline hydrocarbon wax, col. 2 lines 41-42)* also discloses using a polydimethylsilicone liquid and a hydrocarbon material combination

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that qualifies as "waxy silicone material", when defined by the Applicants in the instant Specification (page 7, paragraph [0018]).

Young et al. does not describe the composition as "controlling the release of an active material." However, this limitation is a property or function of the claimed composition, and the reference discloses a composition that is identical to the presently claimed composition. Identical compositions cannot have mutually exclusive properties. Accordingly, the composition of Young et al. is presumed to inherently "control the release of the active material."

Claims 1-6 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by *Leaym et al. (US App 2006/0167117)*.

The applied reference has a common Inventor and Assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Leaym et al. (US App 2006/0167117 See claim 17 and page 10, first full paragraph [0028] and page 15, Example 3 and Example 6) disclose the use of a composition for controlling the release of an active material, comprising a blend of the active material and a waxy silicone material wherein the blend of active material and

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waxy silicone material is in an emulsion form and the silicone material least 20 percent of the silicon atoms has an alkyl substituent having 16 to 100 carbon atoms. *Leaym et al.* also discloses of quaternary cationic surfactants containing at least one ester group with 12-22 carbon atoms on side chains. The reference also shows the use of an additional silane fluid (*Example 6*), salt and ammonium surfactants (*Example 3*) along with perfume within an emulsion .

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 3, 5, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Young (US 4152272)*, as applied to Claim 1 above, in view of *Steiger et al. (6235914)*.

Young discloses a composition that anticipates Claim 1. *Young* does not also disclose that the quaternary ammonium may contain ester linkages.

On the other hand, *Steiger et al. (US 6235914)* teaches using esterquat quaternary ammonium material genus's for use in multiple applications (*col. 1 lines 19-53*) including textile treatments or fabric softeners. *Steiger et al.* also teaches use of such esterquat materials in formulations including silicone emulsions (*col. 41 lines 46-*

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68 and col. 42 lines 1-20), perfumes (col. 36 lines 17-32), and waxes (col. 36 line 9) among others materials.

The esterquat quaternary ammonium materials in the two genus's contain two alkyl chain lengths ranging from 6-22 carbon atoms that are taught by *Steiger et al.* (*Abstract*) can be used along with other quaternary ammonium compounds (col. 4 lines 62-68 and col. 5 lines 1-4); they can also be combined with non-esterquat cationic surfactants (amine ethoxylates) to improve formulation stability (col. 19 lines 58-63). *Steiger et al.s'* teachings also provide motivation to improve a fabric's soft handling and rewetting power, along with affording biodegradability of the composition, when using esterquat surfactants (col. 3 lines 18-23).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the esterquats of *Steiger et al.* for the quaternary ammonium of *Young* because using the esterquats improve fabric treatment formulations and their biodegradability, as indicated above.

As to Claim 5, *Young* does not also disclose using at least 0.1 molar (amount of) salt in the composition.

However, *Steiger et al.* (col. 19 Lines 65-68) teaches the use of a salt in formulations using from 0-2% "active level" to enhance formulation stability. [*Example A* provides an application using 0.10 weight % of calcium chloride salt (111 g/mol) (obviously, fully water soluble/ionizable at room temperature) in a solution comprising about 46.5 weight % of water. When converted to molar amounts, and neglecting the

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volume of all the other ingredients but water, the amount comes to 0.009 M. However, since a 2% amount of salt is allowed, the Molar amount can be increased by about a factor of 20 to about 0.18 M.] *Steiger et al.*'s suggests motivation by also including the use of esterquat quaternary ammonium material materials (Abstract), silicones (*col. 41 Lines 46-68 and col. 42 lines 1-20*), perfumes (*col. 36 lines 17-32*), waxes (*col. 36 line 9*)} along with other ingredients that are included in *Young's* disclosures.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have modified *Young's* disclosure because of the success suggested *Steiger et al.* using of a salt along with many of *Young's* materials.

As to Claim 3, *Young* fails to disclose the application of mixing additional silicone materials in the composition.

However, *Steiger et al.* (*col. 36 lines 6-16*) teaches using other silicones as additives along with wax. It would have been obvious at the time of the invention that *Steiger et al.* suggested using more than one of any silicone, as well as any wax, including those indicated by the Applicants.

Claim 1, 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Young* as applied to Claim 1 above, and further in view of *Hughes* (WO 96/19119). While *Young* discloses attributes for instant Claim 1 and therefor nearly all of the attributes required for instant Claim 2, *Young* fails to disclose using a specific type of

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alkyl substituted silicon having 16-100 carbon atoms that are attached to 20% of the silicone atoms in the waxy silicone material.

However, *Hughes* (*Page 21 claims 1-2 and 6-7*) teaches compositions using silicone materials, and mixtures thereof, when disclosing a method to provide improved surface residuality [taken to mean: “ability to persist longer”] (*Abstract*) and composition stability for various products (*Page 1, 1st paragraph*) to provide increased perfume impact (*Page 1, 2nd paragraph*). The teachings by *Hughes* also include using cationic surfactants (*Page 9 2nd full paragraph*) and compositions with water (*Page 20, Examples VI to IX*). The reference teachings suggest using a silicone to aid the controlling release of compositions comprising fragrances, as indicated by the Applicants via instant Claim 1.

Hughes teaches a polymer type, using a genus for fragrance compositions (*Page 4, top of the page to the end of the 2nd paragraph*). When the genus provides for “q” as being 100, when n and m are 1, and when Y is in the range of 16-22 carbon atoms, the applicants requirements for instant Claim 2 are met because over 20 percent of the silicon atoms would have alkyl substituents with at least 16 carbon atoms.

Since there is no restriction on the number of carbons used between 16-22 carbon atoms, and since the values for “m” and “n” are allowed to be 1, it would have been obvious at the time of the invention to use any combination (for n, m, or carbons numbering above 15), including those of the Applicants’.

Thus, it would have been obvious to those skilled in the art at the time of the invention, to use the limited number of genus combinations by *Hughes* to improve the

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type silicone material used by *Young* to improve fragrance residuality and composition stability.

Claims 1-9 are provisionally rejected under 35 U.S.C. 103(a) as being obvious over copending *Application No. 10/548775* which has a common Inventor and Assignee with the Instant Application. Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e) if published or patented. This provisional rejection under 35 U.S.C. 103(a) is based upon a presumption of future publication or patenting of the conflicting application.

Leaym et al. (US App 2006/0167117 See claim 17 and page 10, first full paragraph [0028] and page 15, Example 3 and Example 6) disclose the use of a composition for controlling the release of an active material, comprising a blend of the active material and a waxy silicone material wherein the blend of active material and waxy silicone material is in an emulsion form and the silicone material least 20 percent of the silicon atoms has an alkyl substituent having 16 to 100 carbon atoms. *Leaym et al.* also discloses of quaternary cationic surfactants containing at least one ester group with 12-22 carbon atoms on side chains. The reference also shows work disclosing the use of an additional silane fluid (*Example 6*), salt and ammonium surfactants (*Example 3*) along with perfume in comprised within an emulsion .

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

This provisional rejection might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application prior to the effective U.S. filing date of the copending application under 37 CFR 1.131. This rejection might also be overcome by showing that the copending application is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON GRESO whose telephone number is (571)270-7337. The examiner can normally be reached on M-F 0730-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/
Supervisory Patent Examiner
Art Unit 4131

AJG